

1882-060 Chancery Causes: Unthank & Adams J for &c vs. James Gray &c
Lee Co.

Unthank, Adams

CA-Debt

T-Property

-Deed

To the Honorable John W. Kelly, Judge
of the Circuit Court of Lee County.

The Bill of Complaint of Ewell V. Muthank, and George W. Adams, late merchants & partners in trade, under the name & style of Muthank & Adams, who sue for the benefit of The said E. V. Muthank, would respectfully represent that on the 12th day of January 1870, your Orators instituted in your honorable Court, their action at Law, against one James Gray, to recover a debt due by note from said Gray, to the Plffs, and at the following June term of said Court, a judgment was rendered in favor of your Orators, for &c, for the sum of \$36.05. with interest from the 4th day of February 1857, subject to a credit of one dollar paid in 2 days work, as of the 26th Feb 1858, and the Costs of said action \$6.25. This judgment was docketed in due time, and shortly after it was rendered, an execution issued thereon, and went into the hands of the Sheriff of said County, who returned no property found. A copy of said summons, judgment, and the docketing thereof, and execution, and returns thereon, is herewith filed, as part of this Bill marked respectively (A. B. C. D.)

At the time the said action at law was instituted the said James Gray was part owner of a small tract of land lying in Lee County, on the waters of Indian Creek and in possession of part thereof, and also the owner of some personal property; the said land was conveyed to him & others, by William Sawyer, by deed now of record in the clerk's office of said county, from which the meter & bounds of said land will appear, a copy of which deed is filed as an exhibit with this Bill, & prayed to be considered as part thereof, marked (C).

Very soon after the issuing of the summons in the said action at law, & the service thereof, the said James Gray, procured his wife to join in a conveyance (of 45. or 50 acres of the Land embraced in the first named deed,) to his son Carlo B. Gray, which conveyance is dated the 24th Feby 1870, and

is of record in the clerk's office of said County, a copy of which, as well as, of a deed of personalty, made the same day, is also filed with this Bill, and a part thereof marked (H) and prayed to be considered therewith.

It will be seen that each of these deeds, purport to be a Valuable Consideration, in part only, & that the residue is for natural love & affection for their said son; but your Orators allege that there was no Consideration whatever, deemed Valuable in Law, passed between the grantor & grantee for the execution of either of said deeds, and that the Considerations expressed in each, were fictitious, and the property conveyed by each, was a mere gift of the said James Gray whilst indebted, not founded upon a consideration deemed Valuable in Law, and is, under the provisions of the 2^d Sect of Ch 118, of the Code of 1850, Void as to the then Creditors of the said James Gray, of whom your Orators were a part. But your Orators are advised, & therefore, allege, that if the Considerations expressed in said deeds were Valuable in Law, so far as they purport to be, yet said deeds are void, because they were made by the said James Gray, with intent to delay, hinder, and defraud his creditors, and your Orators, and that the said Carlo B. Gray had notice, of the said intent, of the said James Gray.

Your Orators regarding the said deeds as void, claim that their judgment is a lien upon the interest of the said James Gray, in the land aforesaid, and that their execution is a lien upon his personal property, hence the object of this suit, is to obtain a decree annulling said deeds, and enforcing said judgment lien by a sale of his said interest, as they are informed & believe, & therefore allege, that the rents & profits of his interest, in said small tract of land, will not satisfy & pay their debt interest, & costs, & costs of this suit, in five years.

Your Orators being without an adequate remedy at Law, and entitled to relief in Equity, there prays therefore is, that the said James Gray, & Carlo B. Gray

be made parties Defendants, to this Bill, and that they each be required to answer its allegations, as fully & truly upon oath, as if the same were repeated by interrogatories, answering clearly what sum if any, was actually paid by the said Carlo B. Gray, to the said James Gray for the Land conveyed by the latter, to the former; and also separately what amount, the said Carlo B. Gray, in fact & truth paid James Gray, for the personal property, the latter, conveyed to the former by the deed made an exhibit with this Bill; and if any sum, was actually paid in either case, that they be required, to state specifically, when and where and in what the same was paid, whether in money, or property, and set forth, or produce any receipts, or other evidences they hold of such payment. And that the said James Gray, state positively, & directly, whether, or not he did not make said deeds, or either of them, to prevent your Orators from forcing the collection of their debt as soon as they got their judgment, & if it was not his intention to gain time by the execution of said deeds, & that the said Carlo B. Gray, answer emphatically, whether or not, such intention, & purpose of his father was not known to him, at the time said deeds were executed; and that upon a final hearing, Your Honor, will render a decree, declaring said deeds void, and subjecting the said James Grays, interest in said lands, to sale, in payment, of your Orators, judgment lien, principal interest & costs at Law, and the Costs of this suit; and grant to your Orators, such other, general & special relief, as their case merits, and it is competent for a Court of Equity, to afford in the premises.

May the Commonwealth's writ of Subpoena issue directed to, & as in duty bound your Orators will ever pray &c.

Same for Pliffs.

Unthank & Adams, for the

Bill

James Gray & Co

Exhibits filed.

1873 July, Bill Filed, & Decree nisi

1874 Mr. & Mrs. Gray's Camp
1875 Mr. & Mrs. Gray's Camp
1876 Mr. & Mrs. Gray's Camp
1877 Mr. & Mrs. Gray's Camp

1874 Mr. & Mrs. Gray's Camp

1875 Mr. & Mrs. Gray's Camp

1876 Mr. & Mrs. Gray's Camp

1877 Mr. & Mrs. Gray's Camp

1879 Mr. & Mrs. Gray's Camp

1880 Mr. & Mrs. Gray's Camp

1881 Mr. & Mrs. Gray's Camp

1882 Mr. & Mrs. Gray's Camp

1883 Mr. & Mrs. Gray's Camp

1884 Mr. & Mrs. Gray's Camp

1885 Mr. & Mrs. Gray's Camp

1886 Mr. & Mrs. Gray's Camp

1887 Mr. & Mrs. Gray's Camp

1888 Mr. & Mrs. Gray's Camp

1889 Mr. & Mrs. Gray's Camp

1890 Mr. & Mrs. Gray's Camp

1891 Mr. & Mrs. Gray's Camp

1892 Mr. & Mrs. Gray's Camp

1893 Mr. & Mrs. Gray's Camp

1894 Mr. & Mrs. Gray's Camp

1895 Mr. & Mrs. Gray's Camp

1896 Mr. & Mrs. Gray's Camp

1897 Mr. & Mrs. Gray's Camp

1898 Mr. & Mrs. Gray's Camp

1899 Mr. & Mrs. Gray's Camp

6.78 Pk. Orr
15.75 Retained
7.50 Pk. Brown
22.78
28.78
Cost at Law 6.75 Paid
\$ 35.53 = 35.53.
Add for 5.91 to May 1877
En 6 4.32 to July 1877
6 1.77

To the Honorable John A Kelly Judge of the
Circuit Court of Lee County Va.

The separate answer of Charles B. Gray to a
bill filed in this Honorable Court against
him and James Gray, by Tushnet & Adams. Respond-
ent saving to himself all proper exceptions. To
said bill for answer thereto or as much thereof
as he deems necessary, or is advised is material
answering he says, - That it is true, the plff
obtained the judgement in the bill mentioned and
he suffers at the time he states - Your orator
further admits that James Gray, was a part owner
of a small tract of land, at least he had a
deed therefor, which he came in the possession
of in this way, - His second wife, Johnah
inherited the same, from her grand father Wm
Sagers, who before his death made a deed joint-
ly to the said James Gray and his said wife,
but the said James never treated the land as his
own, but always regarded it as his wifes property
but your orator is informed in the meaning of the
law they were joint owners, for several years
past the said James has been, to a great degree
dependent on this respondent for the support and
maintenance of him and his said wife, the
latter of whom is now dead and the said James
is about 85 years of age, before their death of
Mrs. Gray they had consumed nearly all the personal

property they owned and were now so old and
helpless they could not work to maintain themselves
they proposed to your crator, to sell them these
lands long before the plff instituted his suit at
law, and for accomodate his said father and
aid him to live he agreed to and did purchase
the said lands, and on the day of 1870
the said James Gray and his wife conveyed by deed
to your crator as shown by an office copy thereof
exhibited with the plffs bill;

Your crator further states that although the deed
purports to be in part consideration of natural
love and affection, that he paid them a full fair
and valuable consideration, and even more than
the land was worth, He paid to them, a debt
they owed to a mercantile firm Wheeler & Ball at
the time the trade was made \$75.- this they owed
for such things as had been furnished them to live
upon, He also paid for them to a doctor bill to
Doct. Morrison of \$15. He furnished them at that time
to Mr Morrison to the amount of \$5.00. paid H. C. Meriman
\$8. He let them have a cow and calf at \$30.00 and
Bacon corn & wheat \$30. and paid them in cash
\$10. making the sum of \$173. he paid them at the
time the trade was made, He had before the
trade was made let them have provisions and
money, and since furnished them other things to the
amount in all to perhaps some \$50. or \$60. dollars.

of which proof will in due time be made. -
The lands are not worth even what your respondent
paid for them, but as before stated he purchased the
same, more to aid his father and step mother to live
than any thing else, He has since sold the land to
one Stephen Arnold for the price of \$250. thus showing
clearly that your respondent gave more than even
he deemed the land worth. - He positively denies
any fraud in him or knowledge of fraud in his
grantors, if he had ever heard of the plffs claim
he had forgotten it; and if the said James had any
fraudulent intent it was unknown to him. - Heavers
the trade so far as he is concerned was fair and bona
fide, and he believes from James Gray's recitation
circumstances, it was made upon his part, for
no other purposes than to enable him to live. - If he had
intended fraud and thus avoiding the payment of his
debts why pay larger ones and avoid the plffs small
one? Your crator denies all fraud & collusion upon
his part, charged against him - claims that he is a
purchaser for value, and the plff has no right to inter-
fere with his purchase. And having now fully
answered he prays hence to be dismissed with
his costs.

James H. Gray

Virginia Lee County to wit:
Carlo B. Gray this day personally appeared before me and made oath
that the facts contained in the foregoing answer so far as made upon his
own knowledge are true, and so far as made upon, upon information
derived from others he believes them to be true -
Given under my hand this 26th Aug. 1873. James W. Orr, clerk.

Carlo B. Gray

ads } Answer.

Centbank & Adams

Filed Aug 29th 1873.

Agel Rep & Conto.

Mr. Thurb & Adams for Hays

vs.

James Gray & others

In Chancery

This Cause came on again to be heard on the 7th day of April 1882, upon the papers formerly read, and Report of Special Commr. M. B. D. Lane, and was argued by Counsel & no exceptions being filed to said report, it is adjudged, ordered & decreed that the same be confirmed. And it appearing by the exhibits filed as part of said report, that the beneficial Plff. E. T. Muthank has sold the land, ~~here~~ purchased at the sale made in this Cause to Carlo B. Gray, one of the Defts in this Cause, and that the said Gray is to pay all the Costs accruing in said Cause after the April term 1876, and also the fee to the Commissioner for making a deed to the ~~land~~ so sold; and it also appearing that the said C. B. Gray has sold the same land to Stephen Arnold, and desires & authorizes, the Conveyance to be made to said Arnold; and Commr. M. B. D. Lane having made said deed, to said Arnold, and filed the same in the papers of this Cause; it is therefore further adjudged, ordered and decreed, that said deed be confirmed, and that the said Carlo B. Gray, pay to the said Commr.

the sum of Five Dollars for his services in making
said deed, and said Connor. M. B. D. Lane may have
execution from this Court for the same; and that ~~it~~
~~the~~ said Carlo B. Gray pay to the proper officers
of this Court, all the costs, that have accrued in this
Cause, since the April term 1876, and execution
may issue for the collection of the same; and
nothing further being necessary to be done in this
Cause, it is ordered to be stricken from the docket,

Wm. H. Adams for & Co
vs. J. H. H. H. H. H.
James Gray & others

Sept Term 1882

Entered Page 276.

J. A. Hyatt
Clerk

Ente
for A. K.
Sept 7/82

Mr. Thunk & Adams for H. G.

James Gray & other } for Chancery.

This cause came on again to be heard upon the first day of April 1876, upon the papers formerly read, and the last order made in this cause, and was argued by counsel; and it appearing to the Court, that the order, appointing Eli Davis, H. L. J. Richmond, and Nathaniel Ewing, to partition the land in this cause, has been duly served upon them; and that they have failed to perform the duty assigned them, in said order, upon consideration whereof it is ordered that the clerk of this Court issue a rule against them, returnable to the first day of the next term of this Court, to show cause, if any they can why they have not performed said duty, but they may yet discharge said duty, and return their report to the clerk's Office, more than 10 days before the next term; and if from physical inability, the said Nathaniel Ewing is unable to act, then Henry Mooney, is directed to act, in conjunction, with the said Davis, & Richmond, who report as above required, and this cause is continued until the next term.

Unthank & Adams ^{for}
by } Decell.
James Gray & others

March Term
1876

Entered Order Book
page 502 & 503.
James W. Orr, Clerk.

Order
L. A. K.

Apr 1/76

Unthank & Adams for Reys
Mr } In Chancery
James Gray & others.

This cause came on again to be heard
on the day of August 1874, upon the papers
formerly read, and Report No 2, of Special
Commissioner, M. B. D. Lane, and was argued
by Counsel; and it appearing to the Court, that
said report has been filed the time required
by law, and no exceptions being filed thereto;
and it also appearing by the receipts of the parties
filed therewith, that the said Commissioner has
paid over the Costs of this suit, as directed
by a former decree of this Court; upon consideration
whereof, it is adjudged, ordered, and decreed, that
said report be confirmed, and this cause
continued until the next term.

Anthony & Adams for Co.

213 Decree, Confirming
Report of 2

James Gray & others

August Term 1874.

Unthank & Adams for the
101
James Gray & others } In Chancery

This cause came on again to be heard, upon
the day of March 1874, upon the papers formerly read,
and the Report ^{of} of Special Commissioner W. B. D. Lane
and was argued by Counsel; and it appearing that the
said report had been filed the time required by law
and no exceptions being filed to the same, upon consideration
whereof it is adjudged, ordered and decreed that said report
be confirmed, and that said Commissioner pay over the
costs in his hands, to the parties entitled thereto, and report
his proceeding to a future Term of this Court. And the Court
considering it necessary, to partition the land sold, & that claimed
by the Deft. Carlo B. Gray, between the beneficial Pltffs & purchaser
in this suit, & the said Gray, before ordering a writ of possession,
to the purchaser, it is further ordered that, Eli Davis, Thos. J. Richmond
and Nathaniel Ewing, go upon the land embraced in the deed from
James Gray & wife to Carlo B. Gray, which deed is filed, as exhibit
(H) with Comptroller's Bill, and partition the same, allotting to the said
Carlo B. Gray one moiety of the same, and to U. B. Unthank the other
moiety thereof, having due regard to quantity & quality, &
the value of the improvements thereon, and water, wood, and
the right of ingress, and egress, and that they make a diagram
of the same, with their report, and that they report their
proceedings to a future Term of this Court, and the cause is
continued until the next Term.

Mr. Thaw & Adams for & Co.

21. 3 Decree

James Gray & other

March term 1874

X

Entered under Book
page 347.

James W. Orr, Clerk.

Enter this
J. A. R.
Mar 28/79

Muthank and Adams for T.

vs. In Chy.

James Gray et al

This cause came on this day to be heard on the bill taken for confessed as to the defendant James Gray, the answer of the defendant Carlo B. Gray, with general replication thereto and the exhibits filed in the cause and was argued by counsel. On consideration whereof, and for reasons stated in writing and filed with the papers of the cause, it is adjudged ordered and decreed, that one half of the interest of the defendant James Gray & his wife ^{in the bill answered mentioned,} held by them jointly, is liable to the lien of the judgment of the plaintiffs ^{in their bill set forth,} and unless the defendants, or one of them, or some one for them, shall, within 30 days, pay to the plaintiffs the amount of their said ~~said~~ judgment, principal, interest & costs, and the costs of this suit; then M.B.D. Sayre, who is hereby appointed a Commissioner for the purpose, shall proceed to sell the one half of the said joint interest, ^{or so much thereof as may be} in front of the Court ^{on some Court day} house of this County, to the highest bidder, for so much cash in hand as will pay the costs of this suit, & the costs of sale, and the residue thereof on one ^{bearing interest} two and three years, requiring the purchaser to execute bonds with good security for the deferred payments, payable to said Commissioner. But before he proceeds to ~~collect~~ sell, he shall advertise the time, place & terms of sale at least 30 days, by posting an advertisement ^{sufficient to pay said judgment & costs} for that length of time on the front door of the Court house of this county and one in the neighborhood of the land to be sold, and report his proceedings to Court the cause is continued

Unthank Adams for t^c.

as ~~3~~ Deane

James Gray et al

Decr 3^d 1873

Enter this

John A. Kelly

Entered at order Book page
331.

James W Orr, clk.

Virginia -

At a Circuit Court Continued and held for
Lee County, at the Court house thereof, ^{Saturday} on the 1st day of Aprl. 1876.

Wortham & Adams & C

Plaintiffs

against

James Gray & another

Defendants

In Chancery

This Cause came on again to be heard upon the first day of April 1876. upon the papers formerly read, and the last order made in this cause and was argued by council; and it appearing to the Court, that the order appointing Eli Davis S.C. J. Richmond and Nathaniel Ewing to partition the land in this cause has been duly served upon them, and that they have failed to perform the duty assigned them in said order, upon consideration whereof it is ordered that the Clerk of this Court issue a rule against them, returnable to the first day of the next term of this Court, to shew cause if any they can why they have not performed said duty, but they may yet discharge said duty, and return their report to the Clerk's office more than 10 days before the next term and if from physical inability the said Nathaniel Ewing is unable to act, then Henry Morley is directed to act in conjunction with the said Davis and Richmond who will report as above required, and this Cause is continued until the next term.

A Copy

Teste - James H. Orr Clerk

Wentham + Adams &c

vs } Copies of Decree
(4 copies)

Virginia -

At a circuit Court ~~Continued~~ held for Lee County
at the Court house thereof, on ^{Saturday} the 1st day of April 1876.

Winstank & Adams &c

Plaintiffs

against

James Gray & another

Defendants

In Chancery

This cause came on again to be heard upon the first
day of April 1876. upon the papers formerly read, and the
last order made in this cause and was argued by Coun-
cil, and it appearing to the Court, that the order appo-
inting Eli Davis H. C. T. Richmond and Nathaniel
Ewing to partition the land in this cause, has
been duly served upon them, and that they have failed
to perform the duty assigned them in said order, upon
consideration whereof it is ordered that the clerk of this
Court issue a rule against them, returnable to the first day
of the next term of this Court, to shew cause if any they
can why they have not performed said duty, but they
may yet discharge said duty, and return their report
to the Clerk's office more than 10 days before the next term
and if from physical inability the said Nathaniel Ewing
is unable to act, then Henry Morley is directed to act
in conjunction with the said Davis and Richmond
who will report as above required, and this cause is
continued until the next term.

A Copy

Teste - James W. Am. Clerk.

For Eli Davis

Virginia.

At a circuit Court ~~Continued~~ held for Loudoun County,
at the Court house thereof, ^{on} ~~the~~ ^{Thursday} 1st day of April 1876.

Worshank & Adams for &c

Plaintiffs

against

James Gray & another

Defendants

In chancery

This Cause came on again to be heard upon the first day of April 1876. upon the papers formerly read, and the last order made in this cause and was argued by counsel; and it appearing to the Court, that the order appointing Eli Davis Jb. L. J. Richmond and Nathaniel Ewing to partition the land in this cause, has been duly served upon them, and that they have failed to perform the duty assigned them in said order, upon consideration whereof it is ordered that the Clerk of this Court issue a rule against them, returnable to the first day of the next term of this Court, to show cause if any they can why they have not performed said duty, but they may yet discharge said duty, and return their report to the Clerk's office more than 10 days before the next term; and if from physical inability the said Nathaniel Ewing is unable to act, then Henry Morley is directed to act in conjunction with the said Davis and Richmond who will report as above required and this Cause is continued until the next term.

A Copy

Teste - James H. Orr Clerk

F. H. L. J. Richmond

Virginia.

At a Circuit Court continued and held for Lee County
at the Court house thereof, on ^{Saturday} the 1st day of April 1876

Wm. Shank & Adams for re

Plaintiffs

against

James Gray & another

Defendants

In chancery

This Cause came on again to be heard upon the first day of April 1876, upon the papers formerly read, and the last order made in this Cause and was argued by Council; And it appearing to the Court, that the order appointing Eli Davis, H. C. T. Richmond and Nathaniel Ewing to partition the land in this Cause, has been duly served upon them, and that they have failed to perform the duty assigned them in said order, upon consideration whereof it is ordered that the Clerk of this Court issue a writ against them, returnable to the first day of the next term of this Court, to show Cause, if any they can why they have not performed said duty but they may yet discharge said duty, and return their report to the Clerk's Office more than 10 days before the next term, and if from physical inability the said Nathaniel Ewing is unable to act, then Henry Morley is directed to act in conjunction with the said Davis and Richmond who will report as above required, and this Cause is continued until the next term. A Copy.

Giste - James H. Orr Clerk

For Nathaniel Ewing

Virginia.

At a circuit Court continued and held for Lee County, at the Court house thereof, on Saturday the 28th day of March 1874.

Unthank & Adams for &c

Plaintiffs

against

In Chancery

James Gray & others

Defendants

This cause came on again to be heard, upon the 28th day of March 1874, upon the papers formerly read, and the report No 1 of Special Commissioner M. B. S. Lane, and was argued by counsel, and it appearing that the said report had been filed the time required by law, and no exceptions being filed to the same, upon consideration whereof it is adjudged, ordered and decreed that said report be confirmed, and that said Commissioner pay over the costs in his hands, to the parties entitled thereto, and report his proceedings to a future term of this Court, And the Court considering it necessary, to partition the land sold, and that claimed by the defendant Carlo B. Gray, between the beneficial plaintiff and purchaser in the deed, and the said Gray, before ordering a writ of possession to the purchaser, it is further ordered that Eli Davis, H. S. J. Richmond, and Nathaniel Cowing, go upon the land embraced in the deed from James Gray & wife to Carlo B. Gray, which deed is filed as exhibit (H) with Complainant's bill, and partition the same allotting to the said Carlo B. Gray one moiety of the same, and to W. V. Unthank the other moiety thereof, leaving due regard to quantity and quality, and the value of the improvements thereon, and water ways and the right of ingress and egress, and that they make a diagram of the same, with their report, and that they report their proceedings to a future term of this Court, and the cause is continued until the next term,

Attest Teste John R. Gibson D.C.

Unthank & Adams for &c
D^t & Copy of Order.

James Gray & Others

Executed an Eli Davis

H. C. J. Richmond & Nathaniel

Ensign.

Thos S Ely, D. C.

Wuthank & Adams for Pl
James Gray & others } In Chancery

I the undersigned, Commissioner appointed
by a decree in said Cause, rendered at the last Term
of Your Honorable Court for the year 1873, to sell the
interest of James Gray, in certain lands in the
Bill mentioned, would respectfully report, that after
having advertised the time, place, & terms of sale, as
directed by said decree, Your Commissioner
proceeded, on the first day of the January Term
of the County Court of Lee County, for the year 1874,
to offer at public outcry, at the front door of said
County House, and on the terms prescribed by said
decree, the interest of James Gray, in the land in
the Bill mentioned, held by himself & wife,
which they had previously conveyed to their son
Charles B. Gray, and the beneficial Plff, by his agent
W. D. Richmond, offered to take said interest for his
debt interest & costs, say One hundred & eleven Dollars
& fifty nine cents and no bystander offering
any better terms, the offer of the said beneficial
Plff, was accepted as the best bid, whereupon, after
deducting from the costs at law & chancery, the attorneys
fee in each case, which said Wuthank had heretofore paid
Your Commissioner, as his counsel, the purchaser
paid, to me \$23.34. (Twenty three Dollars & thirty four
cents, the residue of the costs at law & the costs of this
suit, out of which Your Commr. retained his commisn
\$5.31 (Five Dollars & thirty one cent,) and the balance
of said costs is in the hands of Yr Commissioner
subject to the future order of the Court. Your

Commissioner deemed it unnecessary to take notes
from the purchaser, for the residue of the purchase
money, as he is, as appears from the record, the owner
of the same; and considering that if the sale is
confirmed, that it will only be necessary to partition
the land, contained in exhibit (A), filed with
Complainant's Bill, between Charles B. Gray, and E. W.
Munthauk the purchaser, put him in possession
of his moiety, and cancel his debt, and
convey to him the land assigned him by said partition
to accomplish the ends & purpose, of this suit.

Your Commissioner knows no reason why said sale should
not be confirmed. Respectfully Submitted

March 4th 1874.

W. B. D. Lane - Commissioner

Munthauk & W. B. D. Lane

W. B. D. Lane - Secy.

W. B. D. Lane - Secy.

James Gray & others

Filed March 12th 1874.

James W. D. Lane - Secy.

the Brown

Received of Mr. B. D. Kane, Comr. in the Chancery
Cause of Muthunk & Adams for H. M. James Gray, Father
One dollar, my cost as sheriff, for executing
subpoena in said Cause.

April 2^d 1871.

Thos Brown D.S.

Lyons.

Rec'd of Mr. B. D. Kane, Comr. in the Chancery Cause
of Muthunk & Adams for H. M. James Gray, Father,
Fifty cents my cost as sheriff, for serving summons
in action at law, which costs at law, were brought
into said Chancery suit. April 2^d 1871.

C. H. Lyons D.S.

(124)

(B)

(Unthanked)

Received of W. B. D. Lane, Commissioner in
the Chancery Cause of Anthrax & Adams for \$6.00.
James Gray & others Five Dollars, & seventy eight cents
My costs as clerk in said suit, as taxed to the
time of date of said Comar in said Cause, and
also Three Dollars, & twenty five cents, my costs
~~at law, & tax of writ, which cost at law were brought~~
~~into said Chancery suit April 2nd 1874.~~

James W. Carr.

Amr

678

(16)

Northank.

Received of Mr. B. D. Lane Commissioner in the
Chancery Cause of Northank & Adams for &c. vs
James Gray & other, the amount of the costs
at Law, due me as Clerk, in action of debt
by said parties, vs James Gray, which costs
at Law, were brought into said Chancery suit
Given under my hand, April 3rd 1874,
John B. West.

L. M. West

25

Mutrank & Oldman for Neg
James Gray & others } for Chancery.

As the Honorable John C. Kelly, Judge &c.,
the undersigned Special Commissioner in said
Cause would ask leave to report, that pursuant
to a decree entered in this suit, at the March Term
1874, he proceeded to disburse the costs to the
parties entitled, thereto, that is to say, to James W.
Orr as clerk, \$6.78 (Six Dollars & seventy eight cents), to Thomas
L. Brown, One Dollar as Sheriff, to Cyrus Tyler
as Sheriff, Fifty cents, and to John B. West, as
clerk, in the action at law. Three Dollars, and
twenty five cents. The several receipts of the parties,
for the respective sums above, are herewith
filed as part of this report, marked, (A, B, C, &
(D), &c.)

Respectfully submitted.

August 12th 1874.

W. B. D. Lane

Special Commissioner.

Mr. Thos. C. Adams for D.C.
Mr. 3 Report of 2

James Gray & others

Filed August 13th 1874

John R. Gibson D.C.

Unthank & Adams for the
Came. Gray & others } In Chancery,

The undersigned Commissioner in the above-named Cause would now report, that since his last report, and before the Commissioners appointed by a former decree in this Cause, to partition & lay off the land purchased by C. B. Unthank the beneficial Plaintiff in said Cause, performed said duty, he the said Unthank sold the land so purchased to Charles B. Gray one of the Defts in said Cause, for the sum of sixty five Dollars, which was greatly below the price he paid for the same, and the said Gray was to pay all costs accruing in the above-named Cause after the April term of your honours Court in the Year 1876, as evidence of these facts, your Commissioner files herewith as part of this report, the authenticated affidavit of the said Unthank marked (C. B.). From which it further appears, that he desires the conveyance of the said land to be made to the said Charles B. Gray. Your Commissioner would further report that the said Charles B. Gray by his affidavit made the 5th Nov 1877, and filed herewith as part of this report marked (B. B.) that he made the purchase as above stated, and was to pay the costs of said suit after the April term 1876, and that he is also to pay the Commo's fee for the deed to the said land, and desired & authorized the same to be made.

to Stephen Arnold, to whom affiant had
sold the land, & who had paid the purchase
money, all of which is respectfully
submitted.

W. B. D. Lane, Comvr

Deed made & filed in the papers of the cause

W. B. D. Lane Comvr

Note Kentucky Bell
~~Original Sec~~ County to wit:

This day E. V. Unthank, personally,
appeared before me the undersigned, and made
oath, that in April 1876, he sold, to Carlo B. Gray
for the sum of sixty five dollars, taking his note
for the same, which he transferred to Daugherty & Baylor,
the interest in the land which affiant purchased
at a Commissioners sale made in May 1874, in the
Chancery Cause of Unthank & Adams for &c, against
James Gray others, then pending in the Circuit Court
of Lee County; and that said affiant received
no advance on the purchase price of said land, but
on the contrary, sold to Carlo B. Gray, the interest of his
father James Gray, in the land in the Bill mentioned,
and affiant purchased as aforesaid, for a less sum
than affiant paid for the same; and this
affiant requests & authorizes the Court, if the said
Carlo B. Gray, shall by the next term of the Court
produce satisfactory evidence, that he has paid &
discharged said note, ^{by the court of said decree since April 1876,} to have the conveyance of
said interest in said land, made to the said
Carlo B. Gray, and if he does not furnish ^{such} evidence
then that the conveyance be made to said affiant
as the purchaser at said sale. Given under my
hand, this ~~2nd~~ ^{2nd} ~~Oct~~ ^{Oct} 1877.

2nd Oct

E V Unthank

Sworn to before me, the day & year above
written by E V Unthank

William Taylor J P

State of Kentucky
Bell County

I E. Hurst Clerk of the
County Court for the County and within
the State aforesaid do Certify that
William Taylor before whom the foregoing
affidavit was made is an acting
Justice of the Peace within and for
said County of Bell & State aforesaid
duly Commissioned and qualified
his Commission was dated on
the 15th day of May 1875 and will
expire on the day of May 1879
and all his official acts as such
are entitled to full faith and Credit

Given Under my hand and
Seal of said Court at Office in
Pineville this 2^d day of October 1877
E. Hurst C. B. C.

(A. A.)

Unthank & Adams for H.
M. $\frac{1}{2}$ Comm. Report No. 3.
James Gray & others

Filed Aug. 1. 1882.

J. A. G. Hyatt
Clerk

Virginia, Lee County, to wit:

This day Carlo B. Gray personally appeared before me the undersigned, and made oath, that he purchased of E. V. Muthank, the land heretofore sold in the Chancery Cause of Muthank & Adams for vs James Gray & others, and purchased by said Muthank, for the sum of sixty five dollars, and was to pay the costs on said ^{Suit} accruing after ^{April} 1876, which he is also to pay, the Commissioners fee for the deed to the same, which this affiant hereby declares he desires to be made, & authorizes the Court to have the title to the same made to Stephen Arnold, to whom affiant has sold the same & received the purchase money. The note which affiant executed to said Muthank for the sum above for said land, will be filed with this affidavit, as evidence that affiant has fully paid the purchase money due from him to said Muthank, as required by his affidavit in this cause.

Given under my hand, this 5th 1877.

Charles Willoughby J.P.

(B.B)

The Commonwealth of Virginia :

To the Sheriff of Lee

County---Greeting :

We command you to summon *James Gray*

to appear ^{before Judge} at the clerk's office of ^{our circuit} the county court ^{for county} of Lee, at the court-house, on the first Monday ^{in the clerk's Office} in February next, ^{being Rule day}, to answer *Erwell V. Wuthanks and George M. Adams, late Merchants & partners in trade, acting under the name & style of "Wuthanks and Adams", who sue for the benefit of said Wuthanks, of a plea of Debt for \$36.85 Damage \$36.00*

And have then there this writ. ^{*Henry J. Morgan Depty*} Witness *JAS. W. ORR*, Clerk of our said court, at the court house, this *12th* day of *January* 1870, in the *94th* year of the Commonwealth.

Henry J. Morgan J. Clerk
Acopy
Teste - Jas. W. Orr D. C.

Ervell V. Whitcomb, Bal Lato
Merchants & for &c

20

20

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220

35-

255-

33 { Summo - Feb 6

James Tracy

March Rules 1870.

Executed

L. B. Tyler Dd.

Acopuz

Leah W. A. Orsle

(A)

Virginia.

At a circuit court continued and held for Lee County, at the
court house thereof, on Monday the 6th day of June 1870
"Muthau's Admors" who sue for the benefit of Emmel V. Muthau's Plffs.

vs

James Gray

Left J

The defendant not appearing, It is considered by
the court that the judgment obtained against him in the Clerk's
Office for \$36.05 the debt in the declaration mentioned, with legal
interest thereon from the 4th day of February 1857 till paid and the
cost, subject to a credit of \$1 - paid February 26th 1858.

A copy

Teste Wm A. Orr Clk.

Wentham & Adams for V.
25 Copy of Quincy
James Gray

(R)

Thank V Adams for ve
7-5 Copy of the docketing of
J. J. J. J. J.
James Gray

(C)

Date of Judgment	Plff's Atty	Style of Suit Names, Description & residence of parties	Amount of Judgment &c with interest & costs	When Doct'd
1870		"Muthank's" and Adams, who are for Enell V. Muthank of Plff	Judgment for \$36.05 with interest from Feby 4th 1857 till paid &	June 17th
June 6th	S	against James Gray of Lee County. Va.	In debt the costs. L. 2.75 A. 2.50 S. 50 D. 1.00 Deft.	1870

Wm. Adams for 7c
75 ~~1st~~ 2d. Execution
James Gray

(2)

1870 L. Muthank & Adams for D.S. Dickinson
 June 7th Ervell V. Muthank
 vs
 James Gray
 Judgment for \$36.85 with interest from
 February 4th 1857 till paid & the costs - to. 2.75
 \$2.50 \$1.50 \$1.50
 Subject to the following credit \$1.00 (for
 2 days work) February 29th - 1857

Fi Fa No property found David S. Dickinson D.S.
 for Wm W. Seige S. L. C. Sept. Rules 1870
 Transcript from the execution docket
 Teste Wm A. One D.C.

Balance 275
 attorn 250
 shop 30
 Gas 50
 \$6.25

This Indenture made this 16th day of February in the year of our
Lord one thousand eight hundred and sixty three, by and between
William Sayers of the County of Lee and State of Virginia of the
one part and James Gray and Mary G. Gray, Robert F. Pearman &
Martha V. Pearman of the County aforesaid of the other parts Witnesseth
that the said William Sayers for and in consideration of the sum of
seven hundred and fifty dollars to him in hand paid cloth bargain
and sell unto the said James Gray, M. G. Gray his wife, Robert F.
Pearman and Martha V. Pearman and their heirs a certain tract
or parcel of land in the said County of Lee lying in Bowells Valley
containing one hundred and twenty three acres more or less,
Beginning on a white oak and hick a corner to Stephens and others
on the Spring branch where John Province once lived thence N 44
E 18 poles to two white oaks a corner to said And others thence
with their line N 23 N 28 poles to a stake thence N 70 E 12 poles to a
^(on bank of Indian creek)
oak and white oak, thence N 60 W 18 poles to W. Sayers old line
thence down with said line to said Sayers & A. E. Gibson to a blazed
Elm, there old corner on the South side of Indian Creek, thence
S 26 E. 27 to two white oaks corner to J. J. Gibbon thence with
said Gibbons line S 1 E to the branch and with the meanders
of the branch ³⁴⁷² to the beginning. Said tract or parcel of land in-
cludes the old residence of Samuel T. Pearman, together with the
appurtenances to the said James Gray, M. G. Gray his wife
Robert F. Pearman & Martha V. Pearman their heirs to the said
use and behoof of them the said James Gray & wife, Robert
F. Pearman & Martha V. Pearman & their heirs forever, and
the said William Sayers for himself & his heirs doth covenant
with the said James Gray & wife, Robert F. Pearman and
Martha V. Pearman their heirs that he the said William

Sayers and his heirs will warrant and forever defend
against all persons whatsoever. In witness whereof the said Wm
Sayers has hereto subscribed his name and affixed his seal
this day and year above written

William Sayers Seal

Virginia, Lee County.

I, Robert M. Ely a Justice of the Peace in the County aforesaid
in the Commonwealth of Virginia, do hereby certify that
William Sayers a party to a certain deed bearing date the 16th
day of February 1863 and hereto annexed personally appeared
before me in my County aforesaid and acknowledged the same
to be his act and deed and desired me to certify the same
acknowledgment to the Clerk of the County Court in order
that the said deed may be recorded. Given under my
hand this 18th day of February 1863.

Robert M. Ely J. P.

Lee County Court Clerk's Office. February 21st 1863

This indenture of bargain and sale for land between William
Sayers of the one part and James Gray & Mary J. Gray
Robert F. Beamon & Martha V. Beamon of the other part
was this day admitted to record upon a certificate of a
Justice of the Peace in and for Lee County, Virginia
H. J. Morgan C. C.

A copy

Teste Wm. A. An. J. C.

James Gray Bal
From Copy of Good
Wm. Sayers

602

This Deed made this 24th day of February 1870 between
James Gray, of the County of Lee and State of Virginia, of
the one part, and Carlou B. Gray, of the same County
and State of the other part, Witnesseth, that the said James
Gray for and in consideration of the sum of fifty dollars
to him in hand paid by the said Carlou B. Gray, and for
the love & bare towards my son Carlou B. Gray, the receipt
whereof is hereby acknowledged, have this day bargained,
sold, and delivered, and by these presents do give and
grant unto my son Carlou B. Gray and his heirs for-
ever three head of cattle, two head of Sheep and two
head of hogs together with all my household & kitchen
furniture to him and his heirs forever. In testimony
whereof I have hereunto subscribed my name and
affixed my seal the day and date first aforesaid.

James Gray Seal

Lee County Court, Clerk's Office the 24th day of February 1870.
The foregoing Deed from James Gray, of the one part and
Carlou B. Gray, of the other part, both of the County of Lee
and State of Virginia, was this day acknowledged before
me by the said James Gray to be his act and Deed for
the purposes therein mentioned; and the said Deed being
duly stamped is admitted to record.

Teste: Sylvester E. Thompson Clerk
A copy

Teste: Wm. A. O'Neil

Carlton B. Gray

From ~~Copy of~~ Deed
of personal property

James Gray

(F)

This Indenture made this the 24th day of February 1870
between James Gray & M. J. his wife of the County of Lee
& State of Va. of the one part, & Carlom B. Gray of
the same County & State of the other part, Witnesseth: That
the said James Gray & M. J. his wife for and in the
consideration of the sum of \$100.00 to them in hand
paid by the said Carlom B. Gray, the receipt whereof is
hereby acknowledged and further more for the love we
have for our son Carlom B. Gray we have this
day bargained, sold and conveyed unto C. B. Gray a certain
tract or parcel of land lying and being in the County of
Lee & State of Virginia & on the waters of Indian Creek
it being the same place where our now live and bounded
and follows to wit: bounded on the North by the lands
of McPherson, on the West by the lands of J. J. Gibson, on the
South by the line of Martha Bishop, on the East by the lands
of Martha & Robert Curman, it being the same land that
descended to us from our Grand father Mr. Sangers contain-
ing 45 or 50 acres together with all the appurtenances
thereunto belonging unto the said Carlom B. Gray & his heirs
forever & the said James Gray & M. J. his wife doth
covenant to & with the said Carlom B. Gray that they
the said James Gray & M. J. his wife & their heirs will
warrant the writs of the foregoing land generally.
Witness, the following signatures & seals:

James Gray Seal
Mary J. ^{his} _{mark} Gray Seal

Lee County Court Clerk's Office, the 24th day of Feby. 1870
The foregoing Indenture of bargain & sale for land
between James Gray & Mary Jane his wife of the one
part and Carlisle B. Gray of the other part all of
the County of Lee & State of Virginia was this
day acknowledged before me by the said
James & Mary J. Gray and the said Mary
Jane Gray wife of the said James being
examined by me privily and apart from her
said husband & having the said indenture
fully explained to her, she the said Mary
Jane acknowledged that she had willingly
signed and executed the same and did
not wish to retract it, and the said
Deed being duly stamped is admitted to
record.

Teste Sylvester E. Thompson Clerk
At copy
Teste James M. Orr Clerk

Carlton B. Gray
Thos. Reed
James Gray & wife

(71)

This Deed made this the 6th day of Sept
1882, between W. B. D. Lane Commissioner in
the Chancery Cause of M^r Nathan & Adams for &c
vs. James Gray & others of the one part, and Stephen
Arnold of the County of Sec of the other part; witness
that whereas by a decree rendered in this cause, the
joint interest of James Gray in a tract of land
which he, & his wife conveyed to Carlo B. Gray,
was sold, and purchased by E. N. Nathan & the
beneficial p^{ty} in the above named cause, who
afterwards sold the same to Carlo B. Gray one of
the Def^s in said Cause, for the sum of sixty
five Dollars, and the payment of all Costs in said
Cause accruing after the April term 1876, and the
payment to the Commissioner his fee for making
this deed; and whereas the said Carlo B. Gray
afterwards sold said interest in said land to one
Stephen Arnold, and desired, and authorized
the Court, as shown by his affidavit filed with
Comm^r. Lane's Report at^o 3 filed in said Cause
to direct & make said Conveyance to the said
Stephen Arnold; and now therefore in consideration
of the premises, I W. B. D. Lane, Commissioner as
aforesaid, do hereby convey to the said Stephen
Arnold, all the right, title, and interest of
the said James Gray, in and to the undivided
Moiety of the tract of land mentioned in the
Plaintiffs Bill in the above named ^{cause}, as being
conveyed by James Gray & wife, to the said
Carlo B. Gray. This interest, & land is conveyed

with special warrants only, and as said
commissioner. Witness the following signature
& seal, the day & year first above written

M. B. D. Lane Commissioner

Virginia

Lee County town

I J. A. Hyatt a comm.
in chcy for the County Court of said
County, do Certify that M. B. D. Lane
Comm. personally appeared before me
in my County aforesaid and acknowledged
the foregoing deed bearing date on the
6th day of September to be his act
and deed for the purposes therein
stated Given under my hand this
7th day of September 1882.

J. A. Hyatt Comm.

Stephen Arnold
vs
Thomaz Deed
W. B. D. Lane Commr.

Filed in Circuit Court
Office Sept 7th 1882
J. A. Hyatt
Clerk

ack. Sept 7th 1882 by Comr
before me. Fee for same - 50c
J. A. Hyatt

Unthank and Adams for &c.

Bill to impeach deeds and enforce
James Gray et al Judgment lien.

The bill charges that the deeds are voluntary and therefore void: and further charges fraud. The answer in general terms denies fraud, but goes on to answer specifically. It does not however directly and positively state the terms of purchase. The reading of the entire answer will not enable the most careful reader to say what were the terms of the purchase: It is neither directly admitted nor denied that a gift in part was intended by the grantors. It is neither admitted nor denied that the sum agreed to be paid for the land and personally was \$150 (\$100 for the land & fifty for the personally). It is not indeed directly stated that there was any purchase at all from the defendant James Gray, of any interest in the land or personally. It is stated in the answer indeed that "the said James never treated the land as his own, but always regarded it as his wife's property". How then can it be considered that he purchased of James Gray, that which he never treated as his own and always regarded as his wife's? But when the answer comes to state the consideration, it does not deny the recital that the grant was in part for love & affection, but argumentatively alleges that he paid them (his father & mother) a full fair and valuable consideration, and even more than the land was worth. He then enumerates debts paid for them, money (\$10) paid to them, & property furnished at the time the trade was made ~~amounting~~ amounting to \$173. He wholly omits to state that one dollar of this was paid for the land or the personally, or that one farthing of it was paid in pursuance of any contract to pay it for the land. Still further is the answer from connecting the prior advances and the subsequent advances made to his father & mother with any contract to do so as part of the price of the land. He simply states, in a

very loose and indefinite manner that adding together these prior & subsequent advances and which he will hereafter prove and putting these sums with the \$173, they will make a sum "to the amount in all to perhaps some \$300 or \$400." He then adds the lands are not worth even what your respondent paid for them (his father & mother?). But he adds he purchased the same (the land) more to aid his father & step mother to live than anything else. Is this well nigh an acknowledgment that there was no stipulated price for the property?

To give this answer the very fullest weight it can command, it only sets up an actual payment of \$173. - Surely it cannot be expected that the Court will consider the declaration that there had been added to it by prior & subsequent payments enough to make "some perhaps \$300, of which proof is hereafter to be made, as evidence of any definite sum. If the defendant cannot himself say what he paid so soon after the transaction, how can he expect the Court to determine from that loose declaration. Then suppose it be admitted that the sum of \$173 was paid in consideration of the sale of the land and personal property. How does the case stand? The answer admits the real estate to be worth \$250. What was the personal worth? Three head of cattle, ten head of sheep, ten head of hogs and all the house hold & kitchen furniture of James Gray are to be estimated and added to this \$250 & what sum it will make we are not prepared to say. But certainly it leaves a considerable margin for love and affection.

As the case then stands upon the bill and answer (and the answer is replied to) the Court would give it conclusive force where it is responsive to the affirmative matter of the bill, if it were full, positive and direct. But regarding the answer as evasive as to whether the ^{deft Carlo B. Gray} contracted at all for James Gray's interest in the land, and evasive as to whether the sums of money alleged to have been paid, were paid in pursuance of a contract to pay them as the purchase price of the land and personal property bought, and especially evasive as to whether the prior & subsequent payments were made in pursuance of the contract of purchase, and the answer wholly failing

to designate the price agreed upon between the defendant Carlo & James Gray for the land and the personalty, the Court is unable to say that the contract was for full value and bona fide. Looking then to the circumstances we find them especially suspicious. The defendant James Gray had just been died. He is in necessitous circumstances. He and his wife unite in a conveyance of all their real estate to the son of the defendant. The defendant James Gray then ^{conveys} ~~sells~~ (what may well be regarded all his personal estate) his cattle hogs, sheep, & entire household & kitchen furniture to his son. These transactions occurring on the same day are to be taken together. The defendant ^{for} Gray, then strips himself of his whole estate; and when the defendant Carlo comes to account for the purchase, we learn from his answer that ~~on the same day~~ he pays back on the same day to James Gray a cow & calf! What need had James Gray wife for a cow & calf, when they had neither home, nor bed, nor any article of household & kitchen furniture? And why this absolute deed of the personalty and its recordation? Is it not usual in sales of property of a personal kind to pass it without deed? It is certainly unusual to go to so much expense as the drawing & recording of a deed of personalty where the sale is expected to be perfected by delivery.

It is probable these old people, regarding tenderly the son who had cared for them in their necessities, and desiring to make a return of kindness, determined to bestow upon him all their earthly goods, and supposing, to hold their property, he might have to pay some \$150 for them, made these deeds of gift to him, expressing both the money and the goods in consideration. But, in the total absence of any proof of the contract, and the total evasion of the defendant to state it, ^{with} the admission of the answer that the land alone was worth \$250 & it being manifest that the personalty conveyed was worth a considerable sum & admitting all that the answer has stated as positively paid, to wit \$173, it is ^{evident} ~~manifest~~ that ~~enough~~ the value of the property donated was amply sufficient ^{to cover} ~~to pay~~ the said sum of \$173.

The Commonwealth of Virginia:

To the Sheriff of Lee

County---Greeting:

We command you to summon

James Gray & Charles B. Gray

to appear at the clerk's office of the county court of Lee, at the court-house, on the first Monday
in July next, being Rule day, to answer a bill in
chancery, exhibited in our said court against *James Gray & Charles B. Gray* by Emel V. Unthank
and George M. Adams late Merchants and partners
in trade under the name & style of "Unthank and
Adams" who sue for the benefit of the said E. V.
Unthank

and unless *they* shall answer the said bill within one month thereafter, the same will be
taken for confessed, and the said court will decree accordingly. And have then this writ. Witness

JAS. W. ORR, Clerk of our said court, at the court-house, the 26th day of

June

1873, in the year of the Commonwealth.

James B. Orr

(5) L²
Muthank & Adams for &c
vs Σ Spain & Co

James Gray et al

July Rules 1873

Presented by deliver-
ing to Jas Gray and
Charles B. Gray. an
attested office copy
of the within

Thos J. Brown D^r.
for C. L. Hamble S. L. C.